STATE OF MICHIGAN
IN THE SUPREME COURT

BUDGET RENT-A-CAR SYSTEM, INC, a foreign corporation,

Plaintiff/Appellee,

v

CITY OF DETROIT, a municipal corporation,

Defendant/Appellant.

Supreme Court Case No. 133887

Court of Appeals Case No. 271703

Wayne County Circuit Court
Case No. 05-501303-NI

AMICUS CURIAE BRIEF ON BEHALF OF THE COALITION PROTECTING AUTO NO-FAULT (CPAN)

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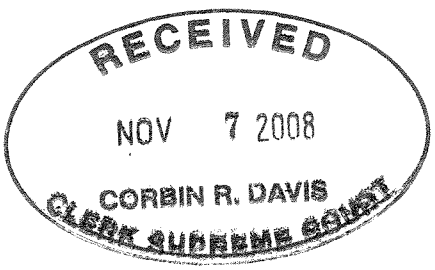

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STATEMENT OF INTEREST OF *AMICUS CURIAE* CPAN

The Coalition Protecting Auto No-Fault ("CPAN") is a broad-based group formed to preserve the integrity of Michigan's model no-fault automobile insurance system. CPAN's member organizations and associations range from major medical organizations and patient advocacy groups directly involved in first-party no-fault issues to consumer groups that have members concerned with third-party claims. CPAN's membership is comprised of sixteen (16) medical provider groups and eleven (11) consumer organizations:

Medical Provider Groups

Michigan Academy of Physicians Assistants
Michigan Assisted Living Association
Michigan Association of Chiropractors
Michigan Association of Rehabilitation Organizations
Michigan Brain Injury Providers Council
Michigan College of Emergency Physicians
Michigan Dental Association
Michigan Health & Hospital Association
Michigan Home Health Association
Michigan Nurses Association
Michigan Orthopedic Society
Michigan Orthotics and Prosthetics Association
Michigan Osteopathic Association
Michigan Rehabilitation Association
Michigan State Medical Society
Disability Network Michigan

Consumer Organizations

Brain Injury Association of Michigan
Disability Advocates of Kent County
Michigan Association of Justice
Michigan Citizens Action
Michigan Consumer Federation
Michigan Paralyzed Veterans of America
Michigan Partners for Patient Advocacy Services
Michigan Protection and Advocacy Services
Michigan State AFL-CIO
Michigan Trial Advocates
UAW Michigan CAP

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CPAN was formed to promote fair and just treatment of auto accident victims under the no-fault system as well as open access to health care providers, prompt and adequate medical care, and reasonable choice of medical services. CPAN recognizes that benefits are paid "without regard to fault" under the No-Fault Act. As a result, benefits are sometimes paid to persons who are "at fault" for becoming injured. However, there are limitations on payment of benefits under the No-Fault Act. For example, benefits are not payable when the person's injuries "were suffered intentionally." MCL 500.3105(4). CPAN believes that such limits must be enforced to maintain the integrity of the no-fault system.

In the case at bar, CPAN believes that Mr. Hurt suffered his injuries intentionally. Effectively, Mr. Hurt was attempting to commit suicide – "suicide by cop". **Suicide by cop** is a colloquial phrase that describes an actual recognized psychological phenomenon wherein a person attempts to commit suicide by acting in such a dangerous, threatening, manner so as to ensure that a police officer will kill that person in order to stop the person from acting. See generally, Lindsay, M. & Lester D., *Suicide by Cop: Committing Suicide by Provoking Police to Shoot You,* Amityville, NY, Baywood Publishing Company (2004).

CPAN believes that Mr. Hurt's actions – unlike those of someone who drives recklessly, carelessly, even drunk – were an attempt by him to commit suicide by cop. Thus, he should not be entitled to recover benefits even though he was struck by a motor vehicle when the patrol car rammed into him, because he was firing his weapon at the police officers who had been pursuing him. In this situation, no benefits were owed to him.

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CONCURRENCE WITH STATEMENT OF JURISDICTION

Amicus Curiae CPAN concurs with the Statement of Jurisdiction as set forth by Defendant-Appellant, City of Detroit, in its Brief on Appeal.

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STATEMENT OF QUESTIONS BRIEFED BY *AMICUS CURIAE* CPAN

Amicus Curiae CPAN will address the issues that this Court requested be included among the issues to be briefed on appeal, as stated in its order granting leave to appeal, as part of its discussion of how Section 3105(4) of the No-Fault Act is to be interpreted.

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CONCURRENCE WITH STANDARD OF REVIEW

Amicus Curiae CPAN agrees that the Standard of Review on appeal is *de novo* as stated by Defendant-Appellant, City of Detroit, at page 13 of its Brief on Appeal.

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CONCURRENCE WITH STATEMENT OF FACTS AND PROCEEDINGS

Amicus Curiae CPAN agrees with the Statement of Facts and Proceedings as set forth by Defendant-Appellant, City of Detroit, on pages 6-12 of its Brief on Appeal.

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INTRODUCTION

This brief *amicus curiae* will address primarily how Section 3105(4) of the No-Fault Act is to be interpreted, and whether the "absurd results" rule applies to the case at bar. The questions asked by this Court in granting leave to appeal will be addressed in the context of the overriding question of how to interpret Section 3105(4) of the No-Fault Act. In sum, CPAN believes the plain, unambiguous language of Section 3105(4) of the No-Fault Act, which precludes recovery of benefits where injuries were "suffered intentionally", means that Mr. Hurt, given the unique facts in this case, is not entitled to no-fault benefits.

ARGUMENT

Plaintiff-Appellee, Budget Rent-A-Car System, Inc. (hereinafter "Budget") seeks reimbursement from Defendant-Appellant, City of Detroit, for personal protection insurance (PIP) benefits paid to an injured person, Mark Hurt, under Michigan's No-Fault Automobile Insurance Act, MCL 500.3101 *et seq.* (" the No-Fault Act"). MCL 500.3105(4), however, precludes such recovery for injuries that were "suffered intentionally by the injured person." Although the phrase "suffered intentionally" is not defined in the No-Fault Act, by simply applying the plain unambiguous meaning of those words, it is clear that Mr. Hurt's injuries were "suffered intentionally" within the meaning of the No-Fault Act. When Mr. Hurt started firing his weapon at the police officers who were pursuing him, any injuries that followed were "suffered intentionally" by him. Effectively, he was trying to commit **"suicide by cop"**. The fact that he was struck by a motor vehicle (and not a bullet) does not change anything. Moreover, since Section 3105(4) of the No-Fault Act does not produce an absurd result, the "absurd results" rule does not need to be applied to this case, given its unique facts.

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I. Section 3105(4) of the No-Fault Act Precludes Payment of Benefits for "Injuries Suffered Intentionally by an Injured Person"

The No-Fault Act generally provides for PIP benefits to be paid "for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle" "without regard to fault." MCL 500.3105(1), (2). MCL 500.3105(4) provides a limitation to this general grant of PIP benefits and states as follows:

> Bodily injury is accidental as to a person claiming personal protection insurance benefits ***unless suffered intentionally by the injured person*** or caused intentionally by the claimant. Even though a person knows that bodily injury is substantially certain to be caused by his act or omission, he does not cause or suffer injury intentionally if he acts or refrains from acting for the purpose of averting injury to property or to any person including himself. [Emphasis added.]

The Court of Appeals first examined how to analyze Section 3105(4) in *Frechen v Detroit Automobile Inter-Insurance Exchange*, 119 Mich App 578, 579-81, 326 NW2d 566 (1982). The issue in *Frechen* was "whether an unintended injury which resulted from an intentional act falls within the ambit of MCL 500.3105(4)." The plaintiff sustained injuries following his decision to climb onto the hood of a slowly moving vehicle in order to prevent his wife from driving home from a bar without him. The Court, however, rejected the insurer's argument that no-fault benefits should be denied, if the injury was foreseeable, commenting that:

> . . . . Most automobile accidents involve volitional acts, such as speeding, drunk driving, or disobedience to traffic signals, which yield unintentional consequences. Negligence often involves an intentional act which falls below a recognized standard of care. A calamity is often a foreseeable consequence of a negligent act. The results of a negligent act are unintended. If the defendant's position is carried to its logical extreme, a no-fault insurer could refuse to pay benefits to its insured because the mishap was a foreseeable

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> consequence of the insured's negligent act. Certainly, the Legislature did not intend, in all situations, to bar recovery by people who were injured as a consequence of their own negligence. [*Id.* at 581-582.]

Subsequently, in *Bronson Methodist Hosp v Forshee*, 198 Mich App 617, 629-630, 499 NW2d 423 (1993), the Court examined whether another intentional act – here, fleeing and eluding the police – automatically precludes recovery of personal injury protection benefits. Similarly to *Frechen*, however, the Court refused to hold that injuries resulting from an admittedly reckless act, like fleeing and eluding the police, were suffered intentionally. *Id.*

In contrast, in *Miller v Farm Bureau Mut Ins Co*, 218 Mich App 221, 226, 553 NW2d 571 (1996), a case much like this one because it also involved an apparent suicide attempt by the injured person, the Court applying MCL 500.3105(4), held that no benefits were owed. Given that Miller was evidently trying to kill himself, his injuries were suffered intentionally, thus precluding him from recovering no-fault benefits. Similarly, in *Schultz v Auto*-Owners Ins Co, 212 Mich App 199, 201-02, 536 NW2d 734 (1995), where the plaintiff evidently jumped from a moving vehicle so as to elicit sympathy from his girlfriend, who was driving, benefits were not owed, because his injuries were suffered intentionally. See also *Amerisure Ins Co v Auto-Owners Ins Co*, 262 Mich App 10, 684 NW2d 391 (2004), in which the Court of Appeals concluded that the fact that the injured person was intoxicated did not necessarily mean that his injuries were not suffered intentionally.

In each case, it was the specific *actions* of the *injured person* that were examined to determine whether the injuries were "suffered intentionally". In this case, the specific actions of Mr. Hurt, in firing his weapon on the police who were pursuing him, was effectively, a suicide attempt, and thus, his injuries, although suffered when he was struck

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by the patrol car which rammed him (and not be a bullet), were suffered intentionally, thus precluding him from recovering no-fault benefits under Section 3105(4) of the No-Fault Act.

II. The Rules of Statutory Construction Mandate That Benefits Be Denied Based on the Plain Unambiguous Language of Section 3105(4) of the No-Fault Act

The rules of statutory construction employed by the Courts in Michigan are clear. This Court recently summarized the rubric of statutory interpretation as the following:

> The primary goal of statutory interpretation is "to ascertain the legislative intent that may be reasonably inferred from the words expressed in the statute." *G C Timmis & Co v Guardian Alarm Co*, 468 Mich 416, 420; 662 NW2d 710 (2003). If the language of the statute is clear, we presume that the Legislature intended the meaning expressed. *Id.* If the statute does not define a word, we may consult dictionary definitions to determine the plain and ordinary meaning of the word. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). [*Allison v AEW Capital Mgmt*, ___ Mich ___; ___ NW2d ___ (2008).]

Moreover, it is also true that "our courts consistently use ordinary dictionary definitions in construing the no-fault act." *Maxwell v Citizens Ins Co*, 245 Mich App 477, 482 (2001).

The No-Fault Act does not define the phrase "suffered intentionally." It is, therefore, helpful to examine definitions from some commonly used dictionaries. *Black's Law Dictionary* (8th ed, 2004), p 1474, defines "suffer" as "[t]o allow or permit (an act, etc.)." *Id.* at 1474. Similarly, *The Random House Webster's College Dictionary* (2d ed, 1997), p 1287, defines "suffer" as "to undergo or experience." See also *The Random House College Dictionary* (rev ed, 1984), p 1313 (defining "suffer" as "to allow or permit"); *The American Heritage Dictionary* (3rd ed, 1992), p 810 (defining "suffer" as "[t]o permit; allow."); *Merriam-Webster's Collegiate Dictionary* (10th ed, 1993), p 1177 (defining "suffer"

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as to "undergo, experience"). Thus, to suffer injuries intentionally under MCL 500.3105(4) is to allow, permit, undergo, or experience those injuries intentionally.

In *Bronson, supra,* the injured person, Mark Forshee, sustained injuries resulting from reckless driving during a high-speed police chase. The Court of Appeals inferred that Forshee did not intentionally suffer his injuries from the specific facts of the case including evidence showed that he braked the car approximately sixty-three feet from the intersection. The Court found that these specific facts supported the conclusion that "Forshee attempted to avoid the accident, rather than create one." *Id.* at 630.

In contrast, in *Miller, supra*, the injured person drove his automobile into a tree at a high rate of speed shortly after throwing a note to his wife. *Id* at pp 222-23. These facts clearly manifested his subjective intent to attempt suicide. Thus, the Court of Appeals correctly found that the injured person's injures were suffered intentionally.

Similarly, in *Schultz v Auto-Owners Ins Co*, *supra*, the injured person jumped from a moving vehicle that he was driving and made comments to his girlfriend that the act was intended "either to elicit [her] sympathy or arouse feelings of guilt in her." The Court of Appeals held that the injured person's "intent to cause himself injury [could] be inferred from the facts." *Id.* at 202.

In this case, Mr. Hurt's actions in intentionally stepping out of the vehicle and aiming his semi-automatic handgun directly at an oncoming police officer seated in a moving patrol car only 10-20 feet away are more akin to the intentional attempted suicides in *Miller, supra,* and *Schultz, supra,* than the act of merely recklessly driving while fleeing and eluding a police officer in *Bronson.* If Hurt had been injured as a result of the high-speed

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chase he had engaged in just minutes before his car came to rest in a residential front yard, his injuries would likely have compensable under the No-Fault Act. Similarly, if Hurt exited the vehicle and simply ran away from Officer Wimmer's approaching vehicle, any injuries subsequently sustained would clearly be compensable as such actions would have been undertaken for the "purpose of averting injury to . . . himself." MCL 500.3105(4). However, Hurt's affirmative, antagonistic actions in aiming a semi-automatic gun at a police officer in a moving police vehicle cannot seriously be construed as actions undertaken for "for the purpose of averting injury to property or to any person including himself" within the meaning of MCL 500.3105(4). Accordingly, because Hurt's injuries were "suffered intentionally" within the meaning of MCL 500.3105(4), he is precluded from recovering for his injuries under the No-Fault Act.

III. The "Absurd Results" Rule Does Not Apply in this Case

The "absurd results" rule has long been used by Michigan courts and courts throughout the nation to prevent a result "that no reasonable lawmaker could conceivably have intended." *Cameron v Auto Club Ins Ass'n*, 476 Mich 55, 78-79, n 4 (2006) (Markman, J., concurring). As Justice Markman noted in his concurring opinion in *Cameron, supra,* "Something is 'absurd' as a matter of law, justifying the extraordinary remedy of judicial reformation, only if it is 'utterly or obviously senseless, illogical, or untrue; contrary to all reason or common sense; laughably foolish or false.'" *Id.* at 84 (Markman, J. concurring), quoting *Random House Webster's College Dictionary* (1991). "However, the "absurd results" rule must not be invoked whenever a court is merely in disagreement, however strongly felt, with the policy judgments of the Legislature." *Id.* at 80 (Markman,

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J., concurring). The strict application of MCL 500.3105(4), however, does not produce in this case a result that "no reasonable lawmaker could conceivably have intended." *Id.* at 79 (Markman, J. concurring). Thus, the "absurd results" rule does not apply to this case.

CONCLUSION

Although the phrase "suffered intentionally" is not defined in the No-Fault Act, applying its ordinary dictionary meaning, it is clear that Mr. Hurt's injuries were "suffered intentionally" within the meaning of Section 3105(4) of the No-Fault Act. Furthermore, since strict application of the clear language of Section 3105(4) of the No-Fault Act does not produce an absurd result, the "absurd results" rule should not be applied in this case.

RELIEF REQUESTED

WHEREFORE, the Coalition Protecting Auto No-Fault (CPAN), as *amicus curiae*, requests this Court conclude, given the unique facts in this case, that Mr. Hurt was not entitled to benefits because he suffered injuries intentionally, and thus, is precluded from recovering benefits under the clear language of Section 3105(4) of the No-Fault Act.

Respectfully submitted,

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